Filed 6/25/12 In re N.J. CA1/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re N.J., a Person Coming Under the Juvenile Court Law.	
T.C., Petitioner, v. THE SUPERIOR COURT OF SOLANO COUNTY, Respondent. SOLANO COUNTY HEALTH & SOCIAL SERVICES DEPARTMENT, et al., Real Parties in Interest.	A134817 (Solano County Super. Ct. No. J40562)

T.C, mother of N.J.,[1] seeks extraordinary writ review of the respondent court's order terminating her reunification services and setting a permanency planning hearing pursuant to Welfare & Institutions Code section 366.26.[2] She also seeks a temporary stay of the dependency proceedings pending a ruling on her petition. She argues there was no substantial evidence supporting the court's findings that the return of the minor would

[1] The child's father is not a party to this writ proceeding.

[2] All further unspecified statutory references are to the Welfare and Institutions Code.

pose a substantial risk of detriment to him and she could not successfully reunify with the minor if the court extended services until June 18, 2012. She also contends she did not receive reasonable reunification services. The Solano County Health & Social Services Department (the Department) opposes the petition. We conclude T.C.'s challenges have no merit. Accordingly, we deny the petition on its merits and deny the stay request as moot.

FACTUAL AND PROCEDURAL BACKGROUND[3]

On December 18, 2010, the Department detained the four month old minor after his parents had been arrested concerning a severe domestic violence incident. About one month later, the juvenile court took jurisdiction of the minor based on a section 300 dependency petition in which it was alleged, among other things, that the minor was at substantial risk of harm due to T.C.'s untreated mental health issues and domestic violence between the minor's parents. After a contested dispositional hearing in March 2011, the court adjudged the minor a dependent of the court and removed him from T.C.'s physical custody; T.C. was directed to participate in reunification services. T.C. was advised that her failure to participate regularly and make substantive progress in court-ordered treatment programs might result in the termination of reunification services.

Before the 12-month review hearing,[4] the Department filed a report dated January 24, 2012, recommending that the minor remain in the care of his maternal grandmother, and that the court terminate T.C.'s reunification services and schedule a section 366.26 hearing to determine the minor's permanent placement. The recommendation was based on the following assessment and evaluation: The minor had been exposed to severe domestic violence between his parents at a very young age. "Recent developmental assessments reveal[ed] that" the minor would "need extensive developmental

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[3] We set forth only those facts necessary to resolve this writ proceeding.

[4] The 12-month hearing had originally been scheduled for January 3, 2012. The hearing was continued and ultimately held on March 1, 2012, and a decision was issued on March 2, 2012.

intervention for some time." The minor was receiving services at North Bay Regional Center and Easter Seals. However, T.C. had not met or made telephone contact with the minor's service providers. Additionally, T.C. struggled with consistently engaging in case plan services including failing to regularly participate in individual counseling and bonding and attachment therapy sessions with the minor. T.C. participated in services when her housing was stable. However, she had not been able to maintain stable housing because of her " 'attitude' " and inability to follow the directives of transitional housing staff, resulting in seven relocations. Although T.C. had completed a domestic violence relapse prevention plan on February 24, 2011, there had been subsequent domestic violence incidents.

At the contested 12-month review hearing, the juvenile court considered the Department's January 24, 2012, status report, and heard testimony from the Department's social worker and T.C. The Department's social worker testified to events that occurred after the filing of her status report. T.C. had moved at least two additional times and was then living in Section 8 housing. However, the social worker had concerns about T.C.'s ability to remain there because of her past difficulties in following transitional housing rules and the many rules imposed in Section 8 housing. As of February 16, 2012, T.C. had participated in two individual counseling sessions. T.C. had not participated in certain services with the minor. T.C. regularly visited with the minor and the social worker had seen an improvement in T.C.'s consistency with visits. The social worker's biggest concern was T.C.'s continued contact with the minor's father despite their violent history, the creation of a domestic violence relapse prevention plan in place since February 2011, and subsequent domestic violence incidents including one on January 9, 2012, during which T.C. had been physically attacked and hurt by the minor's father. When the social worker questioned T.C. about her ability to keep herself and the minor safe from domestic violence, T.C. replied she did not see the minor's father "the way that we see him and that people can change" and she "would not allow him to hurt her that bad." Since the recent domestic violent incidents, T.C. had supervised visits with the minor. In response to the court's inquiry, the social worker testified that a safe transition

for the return of the minor to T.C.'s care would require a six month period during which T.C. would have to maintain her housing, and consistently engage in reunification services, including individual counseling and therapy sessions with the minor. If services were extended to June 18, 2012, the social worker believed that T.C. could show consistency if she attended the minor's appointments and therapy sessions on a regular weekly basis, but T.C. would need a longer period of time to show consistency in individual counseling.

In its order filed on March 7, 2012, the juvenile court found, by a preponderance of the evidence, that returning the minor to T.C.'s care would create a substantial risk of detriment to the minor. The court terminated reunification services after finding, by clear and convincing evidence, that T.C. had been provided or offered reasonable services. The court rejected T.C.'s request for an extension of reunification services until June 18, 2012 (18 months after the date of the minor's first removal). Although T.C. had consistently and regularly maintained contact with the minor, she had not made significant progress in resolving the problems which led to the minor's removal, and she had not demonstrated a capacity and ability to complete the objectives of her treatment plan and provide for the minor's safety, protection, physical and mental health and special needs. The court based its findings on the circumstances of the case, including that T.C. had not been able to maintain stable housing until February 2012; the "absence of stable housing" that had contributed to a pattern of inconsistent mental health treatment on her part; inconsistent participation in counseling; and inconsistent participation in a number of the services that were created by the Department to alleviate the circumstances leading to the removal of the minor, who has special-needs requiring more than just visitation; and "[t]he pattern of domestic violence" that had continued notwithstanding a domestic violence relapse protection plan, and continuance of contact between the parents even following the most recent instance of domestic violence in January 2012. The court scheduled a section 366.26 hearing for June 26, 2012.

DISCUSSION

T.C. challenges the juvenile court's finding of detriment, arguing that the social worker's opinions concerning her ability to safely care for the minor were ***"speculative and conjectural and not based on substantial evidence."*** However, the juvenile court did not rely on the social worker's opinions. It relied on substantial evidence that demonstrated T.C. had failed to participate regularly or make substantial progress in reunification services, and continued to expose herself to domestic violence.[5] Contrary to T.C.'s implicit contention, there was no evidence her mental health issues ***alone*** prevented her from meeting the objectives of her case plan.

Additionally, before the juvenile court could continue reunification services until June 18, 2012, it was "required to find all of the following:" (a) that T.C. had "consistently and regularly contacted and visited with the [minor]; (b) that T.C. had "made significant progress in resolving problems that led to the [minor's] removal" from her care; and (c) T.C. had "demonstrated the capacity and ability both to complete the objectives of . . . her treatment plan and to provide for the [minor's] safety, protection, physical and emotional well-being, and special needs." (§ 366.21, subd. (g)(1).) Substantial evidence supports the juvenile court's ruling that it could not make the necessary findings required to continue reunification services. By the time of the 12-month hearing (14 months after the minor's removal), T.C. had just recently acquired her ninth housing residence, and she had begun to participate in some reunification services, but continued to expose herself to domestic violence despite the development of a domestic violence relapse prevention plan. Contrary to T.C.'s contention, the juvenile court was not required to accept her testimony that she had made substantial progress in addressing the problems that led to the minor's removal and that she would be able to take custody and safely care for the minor if reunification services were extended until

[5] "The failure of the parent . . . to participate regularly and make substantive progress in court-order treatment programs shall be prima facie evidence that return would be detrimental." (§ 366.21, subd. (f).)

June 18, 2012. T.C.'s "argument effectively asks us to reweigh the evidence. We decline to do so." (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 812.) [6]

We are not persuaded by T.C.'s argument that she did not receive reasonable reunification services. The jurisdictional findings in this case were based primarily on T.C.'s mental health issues and her domestic violence issues with the minor's father. The Department's reunification plan appropriately focused on these issues, requiring T.C.'s regular participation in individual counseling, other mental health services, and the development of a domestic violence relapse prevention plan. T.C. contends her case plan was "unduly limited and not specifically tailored to address particularities of [her] needs." She specifically asserts the Department should have asked her "to undergo a mental health reassessment" and asked a medical professional "to determine if alternative or additional services [would have been] helpful to [T.C.] to assist her in compliance with stated case plan goals." We cannot agree with T.C.'s contentions. "If [T.C.] felt during the reunification period that the services offered her were inadequate, she had the assistance of counsel to seek guidance from the juvenile court in formulating a better plan." (*In re Christina L.* (1992) 3 Cal.App.4th 404, 416.) A parent may not "wait silently by until the final reunification review hearing to seek an extended reunification period based on a perceived inadequacy in the reunification services occurring long before that hearing. [Citation.]" (*Los Angeles County Dept. of Children etc. Services v. Superior Court* (1997) 60 Cal.App.4th 1088, 1093.) Additionally, "[t]he standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances." (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547.) T.C. has not demonstrated that the reunification services she received were unreasonable under the circumstances.

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[6] T.C. does not argue that an extension of reunification services beyond the statutory limit of 18 months was necessitated by extraordinary circumstances. (See *Andrea L. v Superior Court* (1998) 64 Cal.App.4th 1377, 1388 [citing cases of "extraordinary circumstances . . . militat[ing] in favor of extension of family reunification services beyond the 18-month limit"].)

DISPOSITION

The petition for an extraordinary writ is denied on the merits. (§ 366.26, subd. (*l*); Cal. Rules of Court, rule 8.452(h).) The request for a stay is denied as moot. Our decision is final immediately. (Cal. Rules of Court, rules 8.452(i) & 8.490(b).)

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McGuiness, P.J.

We concur:

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Pollak, J.

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Jenkins, J.